Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Procedures for Assessment and Collection of Regulatory Fees	)	MD Docket No. 12-201
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008	)	MD Docket No. 08-65

REPLY COMMENTS OF SIRIUS XM RADIO INC.

Sirius XM Radio Inc. ("Sirius XM") hereby submits reply comments in response to the Commission's *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding.[1] Sirius XM agrees with commenters pointing out that, contrary to the FCC's stated goal in this proceeding that "[a]llocation of regulatory fee burdens among regulatees should be fair,"[2] the *NPRM*'s proposals in fact saddle space station operators with disproportionately high regulatory fees and undercut the goal of equitably distributing fees.

The regulatory fees space station operators currently pay already exceed the Commission resources expended on those licensees and run counter to Section 9's mandate that regulatory fees "reasonably relate[] to the benefits provided the payor."[3] A proposal that would more than triple the International Bureau's share of regulatory fees further exacerbates this inequity and must be rejected. The *NPRM* recognizes the International Bureau's unique status among the core

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1 *Procedures for Assessment and Collection of Regulatory Fees*, MD Docket No. 12-201, Notice of Proposed Rulemaking, 27 FCC Rcd 8458 (2012) ("*NPRM*").

2 *NPRM*, ¶ 14.

3 47 U.S.C. § 159(b)(1)(A).

bureaus in that many of its tasks benefit all classes of licensees.[4] Sirius XM supports any fee proposal that would fairly allocate the International Bureau's full-time employees (FTEs) among licensees of all Bureaus as indirect FTEs.

Sirius XM also encourages an intra-bureau review of FTE allocation to ensure that the International Bureau's fee schedule accurately reflects the Bureau's division of work among its various categories of licensees. Finally, an increase in the Commission's already burdensome regulatory fees for satellite operators would further distort the marketplace for audio entertainment.

I. SPACE STATION OPERATORS ALREADY PAY A DISPROPORTIONATELY HIGH PER-LICENSE FEE.

Section 9 mandates that regulatory fees "reasonably relate[] to the benefits provided the payor,"[5] and the *NPRM* states that its "goals must work within the statute, not against it,"[6] allowing "regulatory fees [to be] borne in an equitable manner."[7] The Commission's proposal to burden space station operators with a more than threefold increase in their regulatory fees works against the Section 9 statutory mandate and produces plainly unfair results.

First, satellite operators such as Sirius XM already pay an extremely high per-license fee.[8] Sirius XM shares the view of the Satellite Industry Association ("SIA") that "[s]atellite

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4 *NPRM*, ¶¶ 26-28.

5 47 U.S.C. § 159(b)(1)(A).

6 *NPRM*, ¶ 17.

7 *Id.*, ¶ 14.

8 Space station fees for FY 2012 were $132,875 per operational geostationary satellite and $143,150 per operational non-geostationary satellite orbit network, higher than any other per license fee except submarine cable landing licenses with the highest capacity. *Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, Report and Order, 27 FCC Rcd 8390, Attachment C (2012) ("*2012 Regulatory Fees*"). In contrast, CMRS Mobile/Cellular and Messaging fees totaled just 25 cents per unit, and broadcast fees averaged $39,441 per VHF television station in the top 100 markets. *Id.*

network operators have long been concerned that their regulatory fees are disproportionately high" and that "existing space station regulatory fees – among the highest per license fees for any category – are excessive today and do not fairly represent the level of Commission resources being expended for satellite regulatory activities beyond the processing of space station applications."[9]

Second, unlike the Wireline, Wireless, and Media Bureaus, the International Bureau's FTEs "provide general regulatory benefits to all Commission licensees and specific regulatory benefits to licensees of other Commission bureaus."[10] The Government Accountability Office's recent report about FCC regulatory fee collection corroborates the unique nature of the International Bureau, finding its work is "cross cutting," and it is difficult "to track it according to industry sector."[11] Sirius XM supports a transparent assessment of the International Bureau's direct and indirect FTEs to more equitably apportion the Bureau's FTEs among the core bureaus.

Third, the impetus for overhauling the regulatory fee structure does not correlate with the Commission's proposal to triple the regulatory fees paid by International Bureau licensees. The *NPRM* recognizes there have been "extensive changes in the communications marketplace" due to the "exponential[]" growth of the mobile wireless industry and the widespread increase in intermodal competition.[12] However, "the evidence suggests a reduction – not an increase – in

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[9] Comments of the Satellite Industry Association at 3-4, MD Docket Nos. 12-201, 08-65 (filed Sept. 17, 2012) ("SIA Comments").

[10] Comments of the North American Submarine Cable Association at ii, MD Docket Nos. 12-201, 08-65 (filed Sept. 17, 2012) ("NASCA Comments").

[11] Government Accountability Office, *Federal Communications Commission – Regulatory Fee Process Needs to be Updated*, GAO-12-686, at 22 (Aug. 2012). *See also* Comments of América Móvil at 2, MD Docket Nos. 12-201, 08-65 (filed Sept. 17, 2012) (stating that "the Commission must recognize that a significant number of the [FTEs] of the International Bureau are engaged in activities that benefit licensees regulated by other Bureaus").

[12] *NPRM*, ¶ 1.

the Commission's costs attributable to regulatory activities in the satellite industry."[13] Sirius XM agrees with AT&T that "the proposed significant increase in the percentage of fees allocated to the International Bureau appears not to reflect any increase in the Commission's international activities since 1998, as there has been a substantial reduction in the International Bureau's regulation of the U.S. international market in this period."[14]

For the Commission to achieve its objective of fairness as required by Section 9, it must recognize the unfairness of the current per-license fee paid by space station operators compared to FCC resources expended, accurately count the number of direct FTEs apportioned to the International Bureau, and reduce the Bureau's FTE number accordingly.

II. THE INTERNATIONAL BUREAU SHOULD REVISE ITS INTERNAL FULL-TIME EMPLOYEE ALLOCATION TO REFLECT THE CURRENT DISTRIBUTION OF WORK WITHIN THE BUREAU.

The current fee structure for International Bureau licensees, with Geostationary Space Station licensees paying 51.1% of the Bureau's regulatory fee share and Earth Station licensees paying just 3.9%, does not accurately reflect the allocation of Bureau FTEs assigned to work on matters pertaining to those licensees.[15] For that reason, Sirius XM agrees with the Commission's proposal that "it would better serve the public interest for management in each of the core bureaus to revise their internal FTE allocation percentages based on management's assessment of the current distribution of work within the bureau."[16]

Internal review of the International Bureau's FTE allocation comports both with Section 9's goal that regulatory fees "reasonably relate[] to the benefits provided the payor" and the

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[13] SIA Comments, at 12.

[14] Comments of AT&T Inc. at 2 n.5, MD Docket Nos. 12-201, 08-65 (filed Sept. 17, 2012).

[15] *See NPRM*, ¶ 33.

[16] *Id.*, ¶ 34.

Commission's goal of fairness in this proceeding.[17] As NASCA explained, "[i]nput from bureau management – who have direct knowledge data of how Commission resources and FTEs are deployed within their respective bureaus – would best allow the Commission to satisfy Section 9's requirement regarding FTE allocations."[18]

The Commission's recent NPRM to comprehensively review, update, and streamline its space station and earth station licensing rules provides an opportunity for the International Bureau to revise its internal FTE allocation without expending additional resources.[19] Indeed, as part of that review, the Bureau has already "reviewed Part 25 of the Commission's rules in its entirety," with the "aim to remove administrative burdens" and "expedite both earth and space station license processing."[20] To the extent this evaluation analyzed internal workflow, the Commission may already have current data to properly reallocate the International Bureau's FTE percentages among the five fee categories of payees. An analysis of the Bureau's workflow would demonstrate that its regulatory work equally benefits satellite and earth station licensees and would not justify requiring geostationary space station operators to pay more than 483 times as much in regulatory fees per unit than earth station licensees.[21]

This disparate fee structure must change. The Commission's objectives of fundamental fairness and removing the administrative burden of disproportionate regulatory fees would both be furthered through FTE reallocation within the International Bureau.

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17 *See* 47 U.S.C. § 159(b)(1)(A); *NPRM*, ¶ 3.

18 NASCA Comments, at 29.

19 *See Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Notice of Proposed Rulemaking, FCC 12-117 (rel. Sept. 28, 2012) ("*Part 25 NPRM*").

20 *Id.*, ¶ 5.

21 In FY 2012, geostationary space station operators paid $132,875 per satellite while earth stations paid just $275 per unit. *See 2012 Regulatory Fees*, Attachment C.

III. THE COMMISSION SHOULD CONSIDER THE COMPETITIVE HARM SPECIFIC TO SIRIUS XM THAT WOULD RESULT FROM INCREASED FEES.

The Commission's primary objective for fairness in this proceeding is grounded in the bedrock principle that the "burden of regulatory fees [be] borne in an equitable manner that does not distort the marketplace."[22] For this reason, the Commission must not encumber Sirius XM with exorbitantly high regulatory fees as compared to other participants in the audio entertainment marketplace, many of which are unlicensed and pay no FCC regulatory fees at all.

Sirius XM faces robust competition from an ever-expanding number of audio entertainment choices, many of which are available to consumers for free. The Commission acknowledged in 2011 that Sirius XM "faces intense competition from an array of services including AM/FM radio, HD radio, and iPods," while "new audio services have emerged as viable consumer alternatives, including smartphone Internet streaming applications that can be used in mobile environments such as automobiles equipped with user-friendly interfaces."[23] Indeed, in addition to streaming radio services such as Pandora, Spotify, Rhapsody, Slacker, Last.fm, and iheartradio, well-funded entrants such as Microsoft and Apple have launched or are in talks to launch competing custom-radio offerings.[24]

Sirius XM agrees with SIA that were the Commission to impose increased regulatory fees, "[t]hese added costs would need to be recovered from satellite service customers."[25] As

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[22] *NPRM*, ¶ 14.

[23] *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio Inc., Transferee*, 26 FCC Rcd 10539, ¶ 7 (M.B. 2011).

[24] Dina Bass, *Microsoft to Begin Rolling Out Xbox Music Service*, Bloomberg.com, Oct. 15, 2012, *available at* http://www.bloomberg.com/news/2012-10-15/microsoft-to-begin-rolling-out-xbox-music-service.html; Ethan Smith & Jessica E. Vascellaro, *Apple Seeks to Create Pandora Rival*, The Wall Street Journal, Sept. 7, 2012, *available at* http://online.wsj.com/article/SB10000872396390443589304577636110080423398.html.

[25] SIA Comments, at 24.

SIA noted, "[a] change in the Commission's regulatory fee structure that would result in significant increases in fees paid by satellite operators . . . could harm consumers by negatively affecting the ability of satellite networks to offer . . . communications and media services."[26] Potentially higher prices and diminished service offerings would put Sirius XM at a competitive disadvantage, especially against the many new audio entertainment market entrants free from regulation and corresponding regulatory fees.

IV. CONCLUSION.

Sirius XM applauds the Commission's goal of seeking fairness in assessing regulatory fees. To achieve that goal, the FCC should ensure that it accurately assesses the FTEs in the International Bureau directly working on matters benefitting International Bureau licensees. Moreover, the International Bureau should analyze its internal workflow and reallocate the distribution of its regulatory fee burden among its five license categories. Finally, the Commission should not cause Sirius XM competitive harm by imposing disproportionately high regulatory fees that are not imposed on competitors in the audio marketplace.

Respectfully submitted,

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[26] *Id.*, at 2. *See also* NASCA Comments, at 27 ("the Commission can and should . . . ensure that the costs of such fees do not distort service offering or investment . . . .")